

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

ALAN PRESSWOOD, D.C., P.C., individually
and on behalf of all others similarly-situated

Case No.: 4:17-CV-1977

Plaintiff,

v.

AMERICAN HOMEPATIENT, INC., a
Tennessee corporation, and JOHN DOES 1-10,

Defendants

NOTICE OF REMOVAL

NOW COMES the Defendant, AMERICAN HOMEPATIENT, INC. (“Defendant”), by its attorney, Heather Bub, of SmithAmundsen LLC, and pursuant to 28 U.S.C. §§ 1331, 1441 and 1446, removes this action to the United States District Court for the Eastern District of Missouri, Eastern Division, and in support thereof, states as follows:

The State Court Action

1. The Defendant’s Notice of Removal is based upon subject matter jurisdiction conferred by federal question as established in 28 U.S.C. § 1331.

2. The Plaintiff filed his Complaint on June 22, 2017 in the St. Louis County, Missouri Circuit Court in the civil action styled *Alan Presswood, D.C., P.C. v. American Homepatient, Inc.*, bearing Case No. 17SL-CC02259. (See **Exhibit A**.¹)

3. Plaintiff’s Complaint arises out of the alleged sending of an unsolicited facsimile advertisement, and brings two counts: Count I alleges violations of the Telephone Consumer

¹ Plaintiff also filed a Motion for Class Certification with its Complaint, which is attached as **Exhibit B**.

Protection Act (TCPA), 47 U.S.C. § 227, *et seq.*, and Count II alleges a claim for Conversion.²

4. Service was achieved on Defendant on July 11, 2017. (*See* Service of Process Summary Transmittal Forms attached as **Exhibit C**.)

5. Defendant has not entered its appearance, filed a responsive pleading, or otherwise responded to Plaintiff's Complaint in the State Court Action.

6. This Notice was filed within (30) thirty days of "the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based." 28 U.S.C. § 1446(b).

Federal Question Jurisdiction

7. This Court has original jurisdiction over Plaintiff's Complaint pursuant to 28 U.S.C. § 1331 because the Complaint asserts claims under the TCPA, which "arises under the Constitution, laws, or treaties of the United States." *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 742 (2012).

8. This Court also has supplemental jurisdiction over the remaining state law claims pursuant to 28 U.S.C. § 1367(a) because those claims are so related to the federal TCPA claim that they form part of the same case or controversy. Moreover, Plaintiff's claims do not raise novel or complex issues of Missouri law, and the state law claims do not predominate over Plaintiff's federal TCPA claim.

9. Venue is proper because the Circuit Court of St. Louis County, Missouri is within the United States District Court for the Eastern District of Missouri, Eastern Division. *See* 28 U.S.C. § 105 and 1446(a).

10. As required by 28 U.S.C. § 1446(d), the Defendant will promptly serve upon plaintiff's counsel and file with the St. Louis County Circuit Court a true and correct copy of this

² Plaintiff also states in Paragraph 4 of its Complaint that it brings a claim under the Missouri Consumer Fraud and Deceptive Practices Act (MCFA), but no further allegations supporting this claim are pled and no separate count for violations of this Act are set forth in Plaintiff's Complaint.

Notice.

Written Notice of Removal Has Been Given to Plaintiff

11. Pursuant to 28 U.S.C. § 1446(d), Defendant has given written notice of the filing of this Notice of Removal to Plaintiff and is filing a copy of this Notice of Removal with the Clerk of the Circuit Court of St. Louis County, Missouri. A copy of the Notice to State Court of Notice of Removal filed in the Circuit Court of St. Louis County, Missouri, is attached hereto as **Exhibit D**.

12. By removing this action, the Defendant does not waive any defenses available to it, including but not limited to the defense that this Court lacks personal jurisdiction over the claims of the putative class members who are not yet properly before this Court. A copy of the Notice to State Court of Notice of Removal bearing the file stamp of the Clerk of the Circuit Court of St. Louis County, Missouri will be filed in this Court via ECF upon Defendant's receipt of same.

13. Pursuant to Local Rules 2.02 and 2.03, an Original Filing Form and Civil Cover Sheet are attached as **Exhibits E** and **F**, respectively.

14. Pursuant to Local Rule 2.04, "Jury Trial Demanded" is written on the face of the Notice of Removal as Defendant requests a jury trial.

WHEREFORE, Defendant, AMERICAN HOMEPATIENT, INC., by its attorney, Heather Bub of SmithAmundsen LLC, respectfully requests that this Court exercise jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331, 1441, and 1446.

Respectfully Submitted,

By: /s/Heather Bub
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